

REMARKS

Reconsideration and allowance of this application in light of the foregoing amendments and accompanying remarks is respectfully requested.

THE ALLOWABLE CLAIMS

The Examiner's indication that claims 7 and 8 would be allowable if rewritten in independent form has been noted with appreciation.

THE CLAIM AMENDMENTS

Independent claim 1 has been amended to more particularly set forth the cooperation between the inlet valve and vibration means.

Independent claim 5 has been amended set forth with more particularity the structure of the tank.

Claims 4 and 9 have been canceled to simplify the issues and reduce the number of claims. Applicant does not agree with the Examiner's rejection of the claims 4 and 9. Those claims have been canceled to simplify the issues and reduce the number of claims only for the purpose of advancing prosecution of the present application in a manner consistent with the PTO's Patent Business Goals (PBG), 65 Fed. Reg. 54603 (September 8, 2000). These claims may be represented subsequently in a continuation application.

Claims 7 and 8 have each been amended solely to place each of them in independent form. Thus, claims 7 and 8 as now amended each explicitly sets forth all of the limitations of the original dependent claim, the appropriate original independent base claim, and the intervening claims, if any. Thus, each claim 7 and 8 as now amended to independent form still includes only those limitations of the originally filed corresponding dependent claim. Therefore, this amendment does not narrow the scope of the claims 7 and 8 within the meaning of Festo Corp. v. Shoketsu Kozoku Kogyo Kabushiki Co., 535 U.S. 722 (2002).

THE OBJECTION TO CLAIMS 7 AND 8 IS OVERCOME

Claims 7 and 8 were objected to as being dependent upon a rejected base claim. The Examiner stated that claims 7 and 8 would be allowable if re-written in independent form including all of the limitations of the base claim and any intervening claims.

Claim 7 has been re-written in independent form to include all of the limitations of

the base claim 5 and intervening claim 6. Claim 8 has been re-written in independent form to include all of the limitations of base claim 5. Accordingly, withdrawal of the objection to claims 7 and 8 is respectfully requested.

**THE REJECTION OF CLAIMS 1, 2, 3, AND 5  
UNDER 35 U.S.C. §102(b) IS OVERCOME**

Claims 1-5 and 9 were rejected under 35 U.S.C. §102(b) as being anticipated by Carter et al. (U.S. Patent No. 4,702,401).

However, claims 4 and 9 have now been canceled. Of the remaining claims, claims 1 and 5 are the only remaining independent claims, and claims 2 and 3 are each directly dependent upon independent claim 1.

Independent claims 1 and 5 have been amended. Independent claim 1, as amended, sets forth, *inter alia*, a dispenser wherein the inlet valve is opened when the vibration means are actuated. With reference to the instant application drawing, the inlet valve 4 is controlled to open when the vibration means 34 are actuated. The inlet valve 4 is closed in the unactuated, rest position so as to insure leaktightness as explained in detail in the application specification, at page 5, lines 19-21.

In contrast with the above-discussed unique feature of the instant invention set forth in independent claim 1, as amended, the Carter et al. reference cited by the Examiner teaches away from the instant invention. Specifically, FIG. 5 of Carter et al. shows an inlet valve 104--but the inlet valve 104 is open when the piezoelectric bender 54b is unactuated. Note that Carter et al., at column 7, lines 34-36, states that "when bender 54b is in the relaxed condition, as shown, valve 104 opens to permit fluid 22b to enter nozzle region 62b." Further, Carter et al., at column 7, lines 36-38, states that "when bender bar 54b is deflected [actuated] to position 54b, valve 104 closes to prevent the back flow of fluid 22b from the nozzle region 62b to reservoir 64b."

Thus, Carter et al. discloses an arrangement which is contrary in form and function to the aspect of the instant application invention set forth in amended independent claim 1.

In view of the gross failure of the Carter et al. reference to teach, or even remotely suggest, the novel arrangement set forth in the instant application independent claim 1 as amended, withdrawal of the rejection of independent claim 1 is respectfully requested.

Further, withdrawal of the rejection of dependent claims 2 and 3 is also respectfully requested. Further, allowance of claims 1-3 is earnestly solicited.

The instant application independent claim 5, as amended, sets forth, inter alia, a dispenser having a tank which has an upper section located at the top of the tank and above the level of the fluid product, the upper section being provided with a venting passage.

In contrast, Carter et al. discloses a venting passage 26 (FIG. 2) located on a sidewall of a reservoir below the top of the liquid. In any event, the venting passage 26 is not located in an upper section of a tank.

In contrast, in the instant application invention as set forth in amended claim 1, the venting passage 92 is located in the upper section of the tank 2 as can be seen in the instant application figure, and that venting passage 92 is above the level of the fluid product in the tank.

Thus, Carter et al. wholly fails as an effective anticipatory reference. The rejection of claims 1-5 as allegedly anticipated by Carter et al. should be withdrawn.

Further, in view of the completely different teachings of Carter et al., it would not have been obvious to one of ordinary skill in the art (at the time the instant application invention was made) to provide the tank with an upper section having a venting passage and being located above the level of the fluid product in the tank. Accordingly, withdrawal of the rejection of claim 5 as being anticipated by Carter et al. is respectfully requested. The allowance of independent claim 5, as amended, is earnestly solicited.

#### THE REJECTION OF CLAIM 6 UNDER 35 U.S.C. §103(a) IS OVERCOME

Claim 6, which is dependent upon amended claim 5 discussed above, was rejected under 35 U.S.C. §103 as being unpatentable over Carter et al. Claim 6 is directly dependent upon amended independent claim 5 discussed above. Therefore, dependent claim 5 should be allowable for at least the same reasons that amended independent claim 5 is allowable. Dependent claim 5 requires a venting passage made of a porous material wherein the venting passage is located in an upper section of the tank above the level of the fluid product. One of ordinary skill in the art at the time the instant application invention was made would have been led by the teachings of Carter et al. away from the novel structure set forth in the instant application dependent claim 6. As explained above in discussing

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independent claim 5, Carter et al. teaches a venting passage arrangement which is contrary to that set forth in independent claim 5, and hence, in claim 6 which is directly dependent upon claim 5.

In view of the inadequacy of Carter et al. as a reference, it is believed that dependent claim 6 is allowable. Withdrawal of the rejection of dependent claim 6 is respectfully requested. The allowance of dependent claim 6 is earnestly solicited.

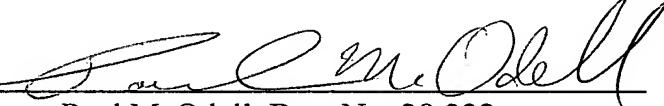
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It is believed that this entire application is now in condition for allowance, and such action is respectfully requested.

Respectfully submitted,

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER

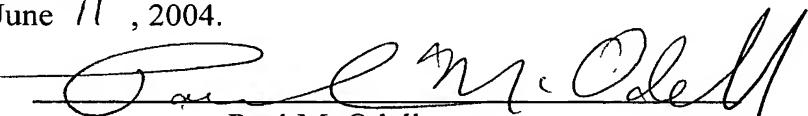
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